

Before the
MONTGOMERY COUNTY COMMON OWNERSHIP COMMISSION
Montgomery County, Maryland

In the Matter of

Churchill East Village Community x
 Association x
c/o P.O. Box 39 x
Germantown, MD 20874, x
 Complainant, x

v.

Tobias Awasum x
12924 Pickering Drive x
Germantown, MD 20874, x
 Respondent. x

Case No. 691-G
August 11, 2005

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to §§ 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

Churchill East Village Community Association (Complainant) filed a complaint with the Office of Common Ownership Communities against Tobias Awasum owner of 12924 Pickering Drive, Germantown, Maryland (Respondent), dated February 24, 2004, alleging violations of community rules. Specifically, the complaint alleged that garbage from that household is not placed at the curb at the designated time for pick up, the empty garbage containers are not removed from the common area after garbage collection, and that household items and garbage are stored on and under the deck in the rear; all of these practices are alleged to be in violation of the rules of the community. The Association has received complaints from the neighbors of this unit and has notified Mr. Awasum of the violations on a number of occasions, requesting that he comply with the rules.

Mr. Awasum submitted no response to the complaint, nor to the two follow-up letters requesting a response. He had also not responded to the efforts of the community to contact him to enforce these rules.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to § 10B-11(f) of the Montgomery County Code on March 2, 2005, and the Commission accepted jurisdiction. A hearing was scheduled for May 18, 2005 and was held on that date. Mr. Awasum did not appear for the hearing nor was he represented.

Findings of Fact

The documents of the Churchill East Village Community Association were filed with the Montgomery County land records in 1980. They do not indicate whether it is a condominium association or a homeowners' association that pre-dated passage of the Homeowners Association Act in 1987.

The Association Declaration, at Article IV, Section 1, assures every unit owner of a "right and easement of enjoyment in and to the common areas and community facilities" which was cited by counsel for the Association as a basis of authority for the rules and enforcement sought in this case.

At Article VII, Section 7, which generally describes "Prohibited Uses and Nuisances", subparagraph (a) states that nothing shall "be done [on any lot or within any dwelling] which may be or become an annoyance or nuisance to the neighborhood or other members [of the community]"; at subparagraph (c) "accumulation or storage of litter, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash" is prohibited on any lot; and at subparagraph (e) trash and garbage containers are not permitted to remain in public view except on days of trash collection and garbage, trash and other refuse shall be placed in covered containers.

Article VII at Section 11 "Community Rules, Etc." says,

There shall be no violation of any rules for the use of the common areas and community facilities or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

In Section 13 of Article VII, the Association is given authority to enforce the provisions of the Article. In the event of a violation, the Architectural and Environmental Control Committee (AECC) is to provide written notice of the violation and require that it be removed or abated within 15 days or a shorter period. If the violation continues the

Association has the authority to resolve the violation upon resolution of the AECC and charge the unit owner the cost under the assessment authority provided in Article V of the Declaration.

The By-laws of the Association, at Article V, Section 3 (d) authorize the Board of Directors to promulgate and enforce “such rules and regulations and such restrictions on or requirements as may be deemed proper respecting the use, occupancy and maintenance of the common areas and community facilities as are designated to prevent unreasonable interference with the use of the common areas and community facilities by the members and others,” which shall be consistent with the By-laws and the Declaration.

A notice was provided to Mr. Awasum, dated October 15, 2003, by the community manager on behalf of the Board of Directors, stating that violations were noted for his unit and specifying that the trash can/bags are left on the common area for extended periods of time and that it had been alleged that the trash can/bags are frequently placed at the curb several days prior to the scheduled pickup. The notice requested that, within ten days,

1. No trash cans or personal property may be stored on common property.
2. Trash cans and/or recycle bins may not be stored in clear view of street.
3. Please follow the guidelines listed:

Please be advised that Association rules on trash/recycling pick up are: Trash pick-up days are Monday and Thursday only! Recycling day is Monday. Trash/recycling is to be placed out no earlier than 9:00 p.m. the night before a scheduled pick up and no later than 7:00 a.m. the day of a scheduled pick-up!! [Emphasis omitted]

The notice ended by advising that should the violations not be resolved, the Board of Directors may hold a hearing and take necessary action.

An AECC Violation Notice Second Notice dated November 5, 2003 was addressed to Mr. Awasum indicating that it had been reported that maintenance violations continued after a previous notice, i.e.:

1. Trash can/bags are left on the common area for extended periods of time. A trash can has been sitting at the curb since the trash was collected on Monday.
2. It is alleged the trash can/bags are frequently placed at the curb several days prior to the scheduled pickup. Two (2) large trash bags and 5 large empty cardboard boxes were placed on the common area next to the trash can on Tuesday, November 4th.

The notice continued, advising Mr. Awasum that he had been provided the rules for the disposal of trash in the October 15, 2003 letter and that he had 15 days to correct the situation or submit a written request for a hearing before the Board of Directors. He was also advised of his right to file a dispute with the Office of Common Ownership Communities.

Another AECC Violation Notice Second Notice was sent to Mr. Awasum dated November 20, 2003. This one indicated that during a recent inspection it had been noted that a violation of which he had been notified was continuing. In this instance the violation was that the “rear yard and under the deck area are still littered with household items.” Mr. Awasum was advised that he had 15 days to correct the violation or submit a written request for a hearing before the Board of Directors. He was also advised of his right to file a dispute with the Office of Common Ownership Communities.

A Notice of Hearing, dated February 4, 2004, and marked “Via Regular and Certified Mail” was addressed to Mr. Awasum. The hearing was scheduled to take place on February 23, 2004 and the subject matter was that the rear yard and under the deck area were littered with household items. He was advised that a decision, which may include removal of the items at his cost, would be made by the Board and a response would be sent to him within 15 days after the hearing.

Another notice, dated February 19, 2004, was sent to Mr. Awasum notifying him that the meeting place had changed. Otherwise, much of the content of the original notice was repeated.

A Notice of Hearing Results, dated February 24, 2004, was sent to Mr. Awasum to inform him that the Board hearing had been held the previous evening to discuss the rear yard and under the deck areas being littered with household items, the trash can/bags being left on the common area for extended periods of time, and trash cans/bags placed at the curb several days prior to the scheduled pick up. It was noted that Mr. Awasum did not attend the meeting. He was advised that the Board intends to file a complaint with the Commission on Common Ownership Communities.

The record includes a variety of rules and policies for the community that are labeled “Homeowner Information Packet”. One of these is “Architectural and Environmental Guidelines,” dated July 27, 1992. This document is 14 pages long and addresses primarily architectural changes, guidelines and process. A paragraph on page 3 of these Guidelines, called “Maintenance,” says:

Property ownership includes the responsibility for maintenance of all structures and ground which are a part of the property. This includes, but is not limited to, items such as mowing grass, removal of trash, and structural maintenance. Maintenance affects the visual character and economic values of the property and neighborhood, and in some cases,

safety. Violations of maintenance standards are violations of the Churchill East HOA covenants.¹

Discussion

Mr. Awasum has been informed of community expectations on the permissible period of time for garbage and garbage containers to be left at the curb. But this record does not include a regulation appropriately adopted and issued to members of the community that sets forth with reasonable specificity what the enforceable standard is.

The issue of household items being left in the rear yard and under deck area, presumably “Prohibited Uses and Nuisances” under the Declaration, for which notice of a hearing was provided, but which was dropped at the Commission hearing is also not covered by a rule or regulation of the community that is included in this record.

The notice to Mr. Awasum of the hearing by the Board of Directors regarding AECC violations specified only the household items littering his rear yard and under deck area and did not mention the extended period that the garbage containers remained on the common area.

Conclusions of Law

As described above, the Churchill East Village Association has the authority to adopt rules and regulations to implement the general language of the community’s Declaration and By-laws. They also have the authority to enforce those rules including to correct the violation and assess the cost to the member responsible for the violation. However, the record in this case does not include community rules and regulations that specifically delineate the time periods for trash containers to be on the common area and provide notice that the community will enforce this standard by removing violating containers at the member’s expense. Nor are there clear rules explaining community expectations for what may and may not be left in a back yard or under deck area. Generalized expectations and rules that are not published in a community are difficult to enforce.

Mr. Awasum was not notified that the hearing by the Board of Directors regarding AECC violations would address the issue of his trash and trash containers. While it may seem that it should have been obvious, the community failed to provide complete and clear notice of the subject-matter of the hearing. Omission of the trash and trash container issue from the Association’s February 4 and 19, 2004 notices to Mr. Awasum is a failure of the Association to exhaust all procedures and remedies available to it under its governing documents. Such exhaustion is a prerequisite to filing a dispute with the Commission. Montgomery County Code § 10B-9(b).

¹ This is the only document in the record which refers to the community as a Homeowners Association.

If the Churchill East community wants to enforce maintenance standards, it needs to develop clear and complete rules and regulations implementing the general authority to maintain the property with enforcement provisions and distribute them to all members and include them in the material distributed to those who purchase units within the community.

Churchill East also needs to be careful to provide specific and complete notice of all issues to be reviewed when a hearing is held by the Board of Directors to consider violations of the AECC standards.

When those standards are met, the Churchill East Village Community Association has all the authority that is needed to enforce properly adopted rules that implement their Declaration and By-laws without further action by the Commission on Common Ownership Communities, including, if it is so stated, to assess the cost of enforcement to the homeowner violating the rules.

Churchill East Village Community Association has the authority to regulate use of the common areas and prohibited uses and nuisances on lots within the community and to enforce their regulations. In order to be enforceable the regulations must be reasonably clear and specific enough to inform members of the community what the enforceable rules and procedures are. If a hearing is part of the process, the notice of the hearing must be complete and accurate as to the issues under consideration.

ORDER

No relief is granted to the Complainant and attorney's fees are denied.

Panel members Charles Fleischer and Lawrence Stein have concurred in the foregoing decision and order.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities